UAC INSURANCE MUTUAL

Board of Trustees Meeting

Wednesday, November 17, 1999, 3:00 p.m. Dixie Convention Center, Sunbrook C St. George, UT

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3:00 Call to Order

Gary Herbert

Revisions to 2000 Coverage Agreement

Brett Rich

Set Date and Time for Closed Meeting to Discuss Pending or Reasonably Imminent Litigation

Set Date and Time for Closed Meeting to Discuss the Character, Professional Competence, or Physical or Mental Health of an Individual

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UACIM BOARD OF TRUSTEES MEETING

MINUTES

November 17, 1999, 3:00 p.m. Dixie Convention Center, St. George

BOARD MEMBERS PRESENT

Gary Herbert, President, Utah County Commissioner

Jerry Hess, Vice President, Davis County Deputy Attorney

Dan McConkie, Secretary-Treasurer, Davis County Commissioner

Tex Olsen, Sevier County Commissioner Kent Petersen, Emery County Commissioner

Sarah Ann Skanchy, Cache County Council Member

Kent Sundberg, Utah County Deputy Attorney

BOARD MEMBERS ABSENT

Chad Johnson, Beaver County Commissioner Tony Dearden, Millard County Commissioner Royal Norman, Box Elder County Commissioner

Ed Phillips, Millard County Sheriff

OTHERS PRESENT

Ken Bischoff, Weber County Commissioner Brent Gardner, UAC Executive Director

Brett Rich, Director, UACIM

Sonya White, UACIM Administrative Assistant

John Chino, GRMS Account Executive

CALL to ORDER

Gary Herbert called the meeting to order and welcomed those in attendance.

REVISIONS to 2000 COVERAGE AGREEMENT

Brett Rich previously sent a copy of the revisions to the Board (see attachment #1). He reviewed the significant changes as follows:

D. GENERAL COVERAGE EXCLUSIONS: On page 11 number three, Brett explained that there is a problem distinguishing between Nurses Professional coverage and Medical Malpractice. Therefore, he recommends revising the Coverage Agreement to include Medical Malpractice in the coverages the Mutual is authorized to write. This will clearly cover nurses and emergency medical technicians (EMTs) whether a claim is deemed as a professional claim or medical malpractice. Coverage is excluded from the policy for doctors/physicians. It is recommended that number six be moved to the EXCLUSIONS under PUBLIC OFFICIALS ERRORS AND OMISSIONS LIABILITY page 48. On page 12 number 12 it is recommended to move loss of or injury to animals except as named in a specific endorsement to EXCLUSIONS under the property section, page 26.

E. GENERAL DEFINITIONS: On page 16 the second paragraph under the definition of "Claim" is not part of the definition but more of a condition of "Claim". Therefore, it is recommended to move this language to the Conditions section of the Coverage Agreement. On page 17 add Law Enforcement Activity under the definition of "Law Enforcement Personal Injury" to clarify this definition. On page 19 clarification is recommended on the definition of "Occurrence" by inserting Bodily Injury and Property where the damage is a defined term.

SECTION I PROPERTY COVERAGE: On page 22 it is recommended to add language under CONDITIONS OF COVERAGE to clarify the provisions necessary for a member to declare a restoration cost instead of replacement cost on a historical building. Under EXCLUSIONS page 41, it is recommended to add the following language to the Crime Coverage: a) Loss caused by any county official required to be individually bonded or insured under Utah Code Ann. §17-16-11 (1995). This exclusion has always been in the policy but had not been written into the Coverage Agreement. The Coverage Agreement is not to be relied upon to satisfy the requirements of §17-16-11. Therefore, it is excluded and covered under the UACIM Bonding Program.

SECTION II LIABILITY: On page 43 under the DEFINITION of "Suit" add language to clarify that although the Mutual may consent to attendance at proceedings, it does not mean that the Mutual agrees to pay for defense. Under EXCLUSIONS page 45, it is recommended to add the following language to clarify the inverse condemnation exclusion: N. Any liability arising out of the operation of the principles of eminent domain, condemnation proceedings or claims, inverse condemnation claims, or regulatory taking by whatever name called, whether that liability accrues directly against the insured or by virtue of any agreement entered into, by or on behalf of the Member. Claims alleging civil rights or statutory violations arising out of any of the listed principles, claims or proceedings are also excluded. On page 46 under CONDITIONS B. DEFENSE, JUDGEMENT AND SEITLEMENT, it is recommended to strike with approval of the Insured. The Mutual always strives to consult with the members when selecting counsel but counsel is always selected from the approved defense attorney list. Without striking that provision the members may claim veto power. On page 47 of the PUBLIC OFFICIALS ERRORS AND OMISSIONS LIABILITY section, clarification that the Coverage Agreement is Claim made coverage. Added language regarding liability arising out of inverse condemnation is recommended to clarify coverage and exclusions under the EXCLUSIONS section of the PUBLIC OFFICIALS ERRORS AND OMISSIONS LIABILITY page 48.

SECTION III AUTOMOBILE LIABILITY: The CONDITIONS adopted by the Board at the October 7 meeting are inserted on Page 53. These conditions are well supported by the Sheriff's Association. Underlying premises to these adopted conditions was that an alternative program was made available to those drivers that may be affected by these conditions. John Chino reported that he is working with a company to get a quote. Indications are that it will cost approximately \$4000-\$5000 per driver.

Tex Olsen made a motion to adopt the revisions to the Coverage Agreement as presented by Brett Rich. Dan McConkie seconded the motion, which passed unanimously.

OTHER BUSINESS

As previously stated in a memorandum to the Board Members, Brett Rich affirmed that Douglas Alexander was released from the employ of McLarens Toplis and is no longer adjusting claims for the Mutual. Jeff Powell who has been working for Hartford in Denver has been offered the claims manager position and has accepted. He will begin working in the office November 29. Brett explained that he was notified yesterday, that Sue Benton has resigned. Curt Hamby will be supervising the Utah office until Jeff arrives and the position of Technical Assistant is filled.

Approved on January 28, 2000

Sarah Ann Skanchy, UACIM Secretary-Treasurer

Cache County Council Member

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5397 South Vine Street Salt Lake City, UT 84107 801.265.1331, 801.265.9485 (fax) sonya@uacnet.org

UAG Insurance Mutual



To:

Gary R. Herbert, Utah County Commissioner Gerald E. Hess, Davis County Deputy Attorney Dan McConkie, Davis County Commissioner Tony J. Dearden, Millard County Commissioner Chad W. Johnson, Beaver County Commissioner Royal Noman, Box Elder County Commissioner Tex Olsen, Sevier County Commissioner Kent Petersen, Emery County Commissioner

Ed Phillips, Millard County Sheriff

Sarah Ann Skanchy, Cache County Council Member Kent Sundberg, Utah County Deputy Attorney

From:

Sonya White

Pages:

Date:

October 8, 1999

Re:

Board Meeting Schedule

Comments:

Please note that the Board of Trustees has scheduled the next two meetings to be held as follows:

November 17, 1999 3:00-4:00 p.m. Dixie Convention Center, St. George

December 3, 1999 1:00-3:00 p.m. **Utah Association of Counties Building**

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D. General Coverage Exclusions

The following exclusions apply to all coverages described in this **Agreement**. This **Agreement** does not provide coverage for:

- Loss, damage or any type of liability caused by or resulting from fraudulent or dishonest acts committed by the **Insured**, whether working alone or with others, except as provided in Section I C - Crime;
- Expenses from any cost, civil fine, penalty or expense against any Insured for any compliance or enforcement action from any federal, state or local governmental regulatory agency;
- 3. Any liability arising out of <u>either the operations of a hospital or the medical malpractice of any physician, medical doctor, osteopath, chiropractor, resident, extern or intern; psychiatrist; pharmacist; dentist, orthodontist, or periodontist elinic malpractice;</u>
- 4. Workers' compensation, employers' liability and occupational disease;
- 5. Claims arising for declaratory or injunctive relief;
- 6. Any liability arising out of the operation of the principals of eminent domain, condemnation proceedings or claims, inverse condemnation or claims, regulatory taking by whatever name called, whether that liability accrues directly against the **Insured** or by virtue of any agreement entered into, by or on behalf of the **Member**. Claims alleging civil rights violations arising out of any of the listed proceedings are also excluded.
 - However, a defense will be provided, up to a maximum of \$25,000 for claims alleging inverse condemnation.
- Liability coverage under this **Agreement** is provided for monetary damages arising from a decision by the **Named Member** or its officers, agents or employees to issue or not issue building or construction permits, certificates of occupancy, business licenses, alcoholic beverage licenses or other permits and licenses that the **Member** is authorized by law to issue.
- 7. Bodily Injury, Personal Injury, Property Damage or any type of damage whatsoever to the property of the Member due to war, either directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, any weapon of war employing atomic fission or radioactive force whether in time of peace or war, hostilities (whether war was declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority;

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- 8. Bodily Injury, Personal Injury, Property Damage or any type of damage whatsoever, including the loss of use or any other type of loss or damage caused by the release, discharge or dispersal of pollutants anywhere, anytime in any way, whether accidental or intentional, sudden, intermittent or continuous and regardless of ownership or location, EXCEPT this exclusion does not apply as provided in Section II Liability for Bodily Injury or Property Damage arising out of heat, smoke or fumes from a hostile fire;
- Bodily Injury, Personal Injury, Property Damage or any other type of damage whatsoever, directly or indirectly caused by the presence of asbestos or lead in any form, except as covered in Section I - Property;
- 10. Loss or damage caused by or resulting from moth, vermin, termites or other insects, inherent vice, latent defect, wear, tear or gradual deterioration, contamination, rust, wet or dry rot, mold, dampness or atmosphere, smog, extremes of temperature or loss or damage by settling for any reason, including movement of any kind, shrinkage or expansion in building or foundation;
- 11. Loss of or damage to or **Claims** resulting from the maintenance, operation or use of any satellite, aircraft, or of water craft over 26 feet in length;
- 12. Loss of or injury to animals except as named in a specific endorsement;
- 13. Loss of or damage to jewelry, precious stones and furs or garments trimmed with fur;
- 14. **Bodily Injury**, **Personal Injury**, **Property Damage** or any type of damage whatsoever for any **Claims** made or lawsuits brought against any **Insured** alleging physical or sexual assault, abuse, molestation or habitual neglect. This exclusion applies whether the act was committed intentionally, negligently, inadvertently or with the belief, erroneous or otherwise, that the other party is consenting and has the legal and mental capacity to consent.

However, the **Insured** may be entitled to a defense and the payment of **Claims** expenses for civil **Claims** brought against the **Insured** as provided under the terms of this **Agreement** if the lawsuit is brought for alleged civil rights violations in addition to physical or sexual assault, abuse, molestation or habitual neglect. The **Mutual** may provide for the defense of the **Claim** unless or until a judgment or final adjudication of liability is established or there is an admission by the **Insured** accused of the act that establishes the injury claimed in the suit in whole or in part. The **Mutual** shall not be required to appeal a judgment or final adjudication that is adverse to the **Insured**. However, if the **Insured** elects to appeal the judgment or final adjudication and the judgment or adjudication is reversed on the issue of liability, the **Mutual** may then

"Claim" is an allegation of damage for which an Insured seeks coverage from the Mutual. Upon an Insured first becoming aware of any act or omission which would reasonably be expected to be the basis of a Claim or suit covered by this Agreement, written notice shall be given by the Insured to the Mutual as soon as reasonably practicable, together with the fullest information obtainable. If a Claim is made or suit is brought against an Insured, the Member shall immediately forward to the Claims administrator every demand, notice, summons or other process received by the Insured or the Member's agent.

"Contamination" means any unclean, unsafe, damaging, injurious or unhealthy condition arising out of the presence of pollutants, whether permanent or transient in any environment.

"Damages" include jury awards, settlements, attorney's fees and costs, but do not include back pay, overtime pay or other benefits that are routinely paid by a Member County to its employees.

"Earthquake" means seismic geologic activity which causes movement in the earth's surface including loss or damage from any other cause or event that contributes concurrently or in any sequence to the loss. If more than one earthquake shock occurs within any period of 72 hours during the term of this insurance, it is deemed to be a single earthquake Occurrence.

"Employee Benefit Programs" means group life insurance, group accident or health insurance, pension plans, profit sharing plans, employee savings and investment plans, employee stock subscription plans, travel or vacation plans, workers' compensation, unemployment insurance, social security, disability benefits insurance, employee welfare benefit plans and welfare plans, and any other similar employee benefit programs.

"Employment Related Practices" means:

- 1. Refusal to employ;
- 2. Termination of employment;
- 3. Practices, policies, acts or omissions such as coercion, demotion, failure to promote, evaluation, reassignment, discipline, harassment (other than sexual harassment), civil rights and discrimination;
- 4. Any act relating to the selection, supervision or dismissal of any employee.

"Environment" includes any person, any real or personal property, animals, crops and vegetation, land including land under which a building is placed, bodies of water, underground water or water table supplies, air and any other feature of the earth or its atmosphere, whether or not altered, developed or

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cultivated, including but not limited to any of the above that is owned, controlled or occupied by a **Member**.

"Flood and Surface Water" means waves, tide or tidal water and the rising (including the overflowing or breaking of boundaries) of lakes, ponds, reservoirs, rivers, streams, harbors and similar bodies of water.

"Hired Auto" means those autos that a Member leases, hires, rents, or borrows. This does not include any auto leased, hired, rented or borrowed for a Member's employees, or members of their households.

"Insured" means a Member. "Insured" also includes any past, present or future officials; members of boards or commissions, trustees or directors; officers, volunteers authorized to act on behalf of the county or employees of the Members while acting within the scope of their duties as such, and any person, organization, trustee or estate to whom the Member is obligated by virtue of a written contract or agreement to provide insurance such as is outlined in this Coverage Agreement, but only in respect of operations by or on behalf of the Member.

"Law Enforcement Activities" means the activities of any Insured while acting as a law enforcement official, officer, auxiliary officer, employee or volunteer of the Member county, provided that the volunteer has been authorized to act on behalf of the Member.

"Law Enforcement Personal Injury" means injury, other than "Bodily Injury", arising out of Law Enforcement Activity and one or more of the following offenses:

- 1. assault and battery;
- 2. discrimination, unless insurance thereof is prohibited by law;
- 3. false arrest, detention or imprisonment;
- 4. malicious prosecution;
- **5.** false or improper service of process;
- 6. humiliation or mental distress:
- 7. oral or written publication of material that slanders or libels a person or organization;

"Occurrence" means an Accident or a happening or event or a continuous or repeated exposure to conditions which result in <u>Bodily Injury</u>, <u>Personal Injury</u> or <u>Property</u> <u>Damage to property</u> during the <u>Agreement</u> period. All <u>personal such</u> injuries to one or more persons and/or <u>Property Damage</u> arising out of an <u>Accident</u> or a happening or event or a continuous or repeated exposure to conditions shall be deemed one <u>Occurrence</u>. There may be multiple <u>Claims</u> or claimants involved in one <u>Occurrence</u>, however only one deductible applies per <u>Occurrence</u>.

"Personal Injury" means mental anguish, shock, sickness, disease, disability or wrongful eviction arising out of malicious prosecution, humiliation, invasion of rights of privacy, libel, slander or defamation of character; also piracy and any infringement of copyright or of property, erroneous service of civil papers, and assault and battery. Personal Injury also means false arrest, false imprisonment, detention and violation of civil rights. However, Personal Injury does not apply to Claims arising out of Law Enforcement Activities.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, sounds, alkalis, chemicals, liquids, solids, gases, thermal pollutants, waste and all other irritants or contaminants. "Waste" includes materials to be recycled, reconditioned or reclaimed. However, for purposes of the general liability coverages provided in this agreement, "Pollutants" does not include herbicides or pesticides.

"Premises" means the interior of that portion of a building which is occupied by the Member for business operations.

"Property" or "Property of the Named Member" means all real and personal property, including leasehold improvements or betterments which the Member owns, property which the Member holds on consignment or agrees to cover by any contractual agreement normal to its operations, and the Member's own property in the course of construction, repair or renovation.

"Property Damage" means direct damage to or destruction or loss of tangible property, including all resulting loss of use of property. This definition applies to Sections II and III of this Agreement. Property Damage excludes damage to the property owned by the Member but includes damage to property of others in the care, custody or control of the Member or property purchased by the Member under a contract which provides that the title remain with the sellers until payments are completed, in which case the Mutual's liability is limited to the amount of payments outstanding.

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- Except as provided in subsection 3. The total liability of the Mutual under this Agreement for loss to property shall not exceed the lesser of the following:
 - a.) the cost to repair;
 - b.) the cost to rebuild or replace, all as of the date of loss, on the same site, with new materials of a like size, kind and quality;
 - c.) the actual expenditure incurred in rebuilding, repairing or replacing on the same or another site; or
 - d.) the Member's stated value listed on the property schedule.
- 3. A Member may provide for the increased value of a historical building, but only by completing the following steps prior to loss:
 - a.) provide written notice of the intention to cover the property for restoration cost instead of replacement cost;
 - b.) include a proper description of the building and the desired limits of coverage for the property; and
 - c.) provide an appraisal supporting the reported value.

B. DEBRIS REMOVAL

This **Agreement** covers the expense of removal from the premises of debris remaining after any covered loss, including the expense of removal of any foundations, if damaged or unusable.

C. REMOVAL CLAUSE

This **Agreement** covers the expense and damage to property removed from the premises which results from the property being endangered by the perils covered against.

D. <u>ARCHITECT'S AND ENGINEER'S FEES</u>

Fees are limited to a maximum of seven percent of the repair or replacement cost of damaged property, whichever is less.

E. CIVIL AUTHORITY CLAUSE

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- T. Loss or damage caused directly or indirectly by the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage.
 - 1. The failure, malfunction or inadequacy of:
 - a. Any of the following, whether belonging to any insured or to others:
 - (1) Computer hardware, including microprocessors;
 - (2) Computer application software;
 - (3) Computer operating systems and related software;
 - (4) Computer networks;
 - (5) Microprocessors (computer chips) not part of any computer system; or
 - (6) Any other computerized or electronic equipment or components; or
 - b. Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in paragraph T.1.a, due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.
 - Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by or for an **Insured** to determine, rectify or test for, any potential or actual problems described in paragraph1 of this exclusion.

<u>U. Loss of or injury to animals except as named in a specific endorsement;</u>

IV. EXTENSIONS OF COVERAGE

A. EXTRA EXPENSE

It is agreed that if the **Member's** property is damaged or destroyed during the period of this **Coverage Agreement** so as to necessitate incurring Extra Expense (as defined below) the **Mutual** shall be liable for the Extra Expense so incurred, not exceeding the actual loss sustained, for not exceeding such length of time, hereinafter referred to as the **Period of Restoration**.

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Direct loss of or damage to property covered resulting from dishonest acts committed by any of the **Member**'s employees, acting alone or in collusion with others, that occur within the period of insurance.

FAITHFUL PERFORMANCE

The **Mutual** will indemnify the **Member** under this Section for loss to property covered through the failure of an employee to faithfully perform duties as prescribed by law or to account properly for all property covered. Coverage includes loss due to the inability of the employee to faithfully perform these duties because of a criminal act committed by someone other than an employee. However, loss resulting from the failure of any entity acting as depository for the **Member**'s property is excluded from coverage.

DEFINITIONS

Dishonest acts means dishonest or fraudulent acts committed with the apparent intent to cause the **Member** to sustain loss or damage and to obtain financial benefit for the employee or for any other employee, person or organization. The financial benefit does not include salaries, commissions, bonuses, fees, profit sharing or other employee benefits.

EXCLUSIONS

In addition to the General Exclusions of this **Coverage Agreement**, there is no coverage under the Crime Coverage for loss or damage due to:

- a) Loss caused by any county official required to be individually bonded or insured under Utah Code Ann. §17-16-11 (1995);
- b) Damage where the only proof of the loss or amount of the loss is dependent upon an inventory or a profit and loss computation;
- c) Loss that is not discovered within one year after the end of the period of insurance:
- d) Legal expenses for any indirect loss.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

"Host/Liquor Liability" means indemnification for the Insured's liability for the sale or distribution of alcoholic beverage.

"Incidental Malpractice" means emergency medical services rendered or which should have been rendered to any person or persons (other than Employees of the Member injured during the course of their employment) by any duly qualified medical practitioner, nurse, technician or other employee employed by and acting on behalf of the Member. This coverage does not apply to persons rendering medical care pursuant to a contract with the Named Member.

"Money Damages" means all sums recoverable by law from any liability covered under this Agreement excluding punitive damages, but not including any sums awarded for plaintiff's attorney fees under 42 U.S. Code, Section 1988 in any case in which monetary damages are not specifically sought or not awarded.

"Products Liability" means Bodily Injury or Property Damage arising out of the Member's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the Bodily Injury or Property Damage occurs away from premises owned by or rented to the Member and after physical possession of such products has been relinquished to others.

"Suit" means an action in which a complaint, requesting Money Damages to which this insurance applies, has been filed in court. "Suit" also includes an alternative dispute resolution proceeding alleging such damages to which the insured must submit or submits with <u>both</u> our consent, and our agreement to pay for defense.

III. EXCLUSIONS APPLICABLE TO PART A - GENERAL LIABILITY

The **Mutual** will provide a defense and indemnification, subject to a reservation of all exclusions and defenses, to any **Member's** public official, employee or authorized volunteer who is alleged to have committed an act of sexual harassment. In no event shall indemnity be provided for any damages awarded against a **Member's** public official, employee or authorized volunteer where it is determined by the court that the claimant was willfully and intentional sexually and physically abused or molested.

In addition to the general exclusions of this **Coverage Agreement**, this section does not apply to:

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injunctive relief ordered under the Americans with Disabilities Act but shall not apply to **Claims** for monetary damages under the Americans with Disabilities Act.

- J. To any **Claim** for back pay, overtime pay or other incidents of compensation or benefits due to a **Member's** employees.
- K. To any Claim arising out of a breach of contract other than an employment contract.
- L. To medical or hospital expenses or costs incurred by the **Insured** in providing or furnishing medical aid or treatment to an inmate or detainee at a jail or correctional facility as a result of the **Insured's** statutory or constitutional obligation to furnish medical or hospital care to an inmate or detainee within its physical custody; this exclusion does not apply to **Claims** brought by an inmate alleging the **Insured**, through the acts or omissions of its representatives or Employees, caused injury to an inmate or violated his constitutional or civil rights by not providing medical care or treatment.
- M. Employment Related Practices.
- N. Inverse Condemnation. Any liability arising out of the operation of the principals of eminent domain, condemnation proceedings or claims, inverse condemnation claims, or regulatory taking by whatever name called, whether that liability accrues directly against the Insured or by virtue of any agreement entered into, by or on behalf of the Member. Claims alleging civil rights or statutory violations arising out of any of the listed principals, claims or proceedings are also excluded.

IV. SPECIFIC CONDITIONS - SECTION II - LIABILITY

A. Cross Liability

In the event of liability being incurred by reason of injury suffered by any employee of one **Member** which does not arise out of the injured employee's employment, for which another **Member** is liable, then this **Agreement** shall indemnify the **Member** for that liability in the same manner as if separate agreements had been issued to each **Member**.

In the event of liability being incurred by reason of **Property Damage** to property belonging to any **Member** for which another **Member** is liable, then this **Agreement** shall indemnify the **Member** in the same manner as if separate agreements had been issued to each **Member**.

Nothing contained in this condition shall operate to:

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- 1. Increase the Mutual's limits of liability; or
- 2. Include coverage for a **Insured Member** who sustains **Property Damage** as a consequence of its own employee's acts.

B. DEFENSE, JUDGMENT AND SETTLEMENT

The Mutual has the right and duty to defend any Suit against the Insured claiming Money Damages for which coverage is afforded under this Agreement for an Occurrence during the Agreement period, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation and settlement of any Claim or suit as it deems expedient. The Mutual has the right to select counsel with approval of the Insured; however, an Insured may hire co-defense counsel, at Insured's expense, to assist in the defense of Claims, provided the attorney selected by the Mutual shall be lead counsel. The Mutual's duty to defend shall arise when the complaint or Claim alleges facts which would obligate the Mutual to indemnify the insured if the alleged facts were proven. The Mutual will only be responsible for payment of that portion of a settlement or judgment which relates to Claims for which coverage is afforded under the terms of this Agreement. however, the Mutual shall not be obligated to pay any settlement or judgment or to defend any suit after the applicable limits of liability have been exhausted.

The limits of liability set forth in the General and Auto Liability Sections shall include all costs, attorney's fees and expenses awarded to an adverse party in a litigated or contested **Claim**. All costs, attorney's fees and expenses incurred in the defense of a litigated or contested **Claim**, shall be excess of the limits of liability set forth in Sections II, III, and IV.

C. In the event of bankruptcy or insolvency of the Member, such bankruptcy or insolvency may not diminish the coverage provided by this section regarding third parties. If execution against the **Insured** is returned unsatisfied, an action may be maintained against the **Mutual** to the extent that the liability is covered by this section.

V. LIMIT OF LIABILITY

The **Mutual's** liability for damages as the result of any one **Occurrence** is limited as described in the Limits of Coverage of this **Agreement** less the amount of the **Insured's** deductible.

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For the purpose of determining the limit of liability, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **Occurrence**.

PART B - PUBLIC OFFICIALS ERRORS AND OMISSIONS LIABILITY

I. COVERAGE AGREEMENT

The **Mutual** agrees, subject to the limitations, terms and conditions of this **Agreement**, to defend any **Suit** and pay on behalf of the **Insured** all **Money Damages** incurred by the **Insured** by reason of any **Wrongful Act** arising out of any **Claim** first made **Occurrence** occurring during the period of this **Coverage Agreement**, or any applicable extended reporting period.

The Mutual will pay on behalf of the Insured, Money Damages and expenses incurred by the Mutual, the cost of attachment or similar bonds (but without any obligation on the part of the Mutual to apply for or furnish such bonds), and costs, charges and expenses incurred in connection with any governmental investigation provided that a Claim is brought against the Insured for a Wrongful Act that is or was a subject of a governmental investigation, and that Claim is otherwise covered by this Agreement.

II. EXCLUSIONS APPLICABLE TO ERRORS AND OMISSIONS LIABILITY

In addition to the general exclusions of this **Coverage Agreement**, this section shall not apply to any **Claim** made against the **Insured**:

- A. Based upon or attributable to them gaining in fact any personal profit or advantage to which they were not legally entitled including remuneration paid in violation of law as determined by the courts.
- B. Brought about or contributed to by fraud, dishonesty or criminal act of any **Insured**.
- C. Based upon or attributable to the rendering or failure to render any opinion, treatment, consultation or service if that opinion, treatment, consultation or service was rendered or failed to have been rendered while the **Insured** was engaged in any activity for which they received compensation from any source other than as a public entity or an employee of a public entity.
- D. Arising out of estimates of probable costs or cost estimates being exceeded or for faulty preparation of bid specifications or plans or to

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injury to, destruction or disappearance of any tangible Property (including Money) or the loss of use thereof.

- E. Arising out of the failure to supply a specific amount of electrical power or fuel arising out of the interruption of the electrical power or fuel supply.
- F. For which the **Insured** is entitled to indemnity and/or payment by reason of having given notice of any circumstances which might give rise to a **Claim** under any agreement or agreements the term of which has commenced prior to the inception date of this **Agreement**.
- G. Arising out of or in any way involving any employee benefit plan of the **Member**.
- H. For any Claim covered under the General Liability section.
- I. For any liability arising out of or in any way connected with the operations of the principles of eminent domain, condemnation proceedings or regulatory taking, by whatever name called, whether such liability accrues directly against the **Insured** or by virtue of any agreement entered into by or on behalf of the **Member**. Claims alleging civil rights violations arising out of any of the above listed principals, claims or proceedings, eminent domain, condemnation proceedings or inverse condemnation proceedings or inverse condemnation, zoning, re-zoning, failure to zone, land use actions or regulatory takings are also excluded.

However, a defense will be provided, up to a maximum of \$25,000 for claims <u>Suits</u> alleging inverse condemnation, but only for claims arising out of or in any way connected with the operations of the principles of eminent domain, condemnation proceedings or regulatory takings, by whatever name called. Such defense limits shall be eroded by the costs of defending other claims, whether covered or not covered under this Agreement, included in the same <u>Suit</u> or arsing from the same <u>Occurrence</u>.

Liability coverage under this Agreement is provided for monetary damages arising from a decision by the **Named Member** or its officers or Employees to issue or not issue building or construction permits, certificates of occupancy, business licenses, alcoholic beverage licenses, or other permits and licenses the **Named Member** is authorized by law to issue.

III. SPECIFIC CONDITIONS - SECTION III - AUTO LIABILITY

- A. As a condition precedent to coverage under this section the **Member** shall:
 - 1. on or before February 1, 1999, submit a current Motor Vehicle
 Report prepared by the State of Utah for each Insured that the
 Member should reasonably anticipate will drive an auto in the
 scope of employment with the Member during the coverage period;
 and
 - require each person for whom a report is required under subsection 1, to complete a driver's training course at least every two years;
- B. The Member shall provide separate insurance for each person reasonably anticipated to drive an auto in the scope of employment with the Member during the coverage period, to whom any of the following applies:
- the latest Motor Vehicle Report shows an offense for either
 Driving Under the Influence, or Alcohol Related Reckless Driving:
- the Motor Vehicle Report submitted under A.1. shows more than 180 points; or
- 3. has had two or more at fault accidents in the past year for which the Mutual has incurred loss;
- C. In the event that liability is incurred by reason of **Bodily Injury** suffered by any employee of a **Member** which does not arise out of the injured employee's employment and for which another **Member** is liable, then this **Agreement** shall indemnify the **Member** for that liability in the same manner as if separate agreements had been issued to each **Member**.

In the event that liability is incurred by reason of **Property Damage** to property belonging to any **Member** for which another **Member** is liable, then this **Agreement** shall indemnify the **Member** in the same manner as if separate agreements had been issued to each **Member**.

Nothing contained in this condition shall operate to increase the **Mutual's** limits of liability.

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